STRAITS SETTLEMENTS REPORTS.

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[ORIGINAL CIVIL JURISDICTION]

PEDLOW, J.

January 11, 1941.

RE W. S. BEE & CO.

[SINGAPORE BANKRUPTCY No. 59 of 1937]

Bankruptcy Ordinance (Cap. 45) s. 67—Whether a creditor who has not proved in the bankruptcy should be ignored—Surplus of bankrupt's assests.

A bankrupt's assets realised more than sufficient to pay in full all his creditors who had proved in the bankruptcy. Some creditors disclosed by the bankrupt did not prove in the bankruptcy although they had been communicated with and all proper notifications had been published.

Held, that after payment of the debts of all the creditors who had proved together with interest at the rate of 8 per cent for the proper period the balance in the hands of the Official Assignee should be paid to the legal personal representatives of the deceased bankrupt. The claims of creditors who had not proved could and should be ignored.

Cases referred to:—

1. *In re Higginson and Dean* 1899 1 Q.B. 325.
2. *In re Keet* 1905 2 K.B. 666.
3. *In re Staunton* 1902 I.R. 60.
4. *Re Neo Chin Siew* (1935) S.S.L.R. 94; 4 M.L.J. 116.
5. *Re Alexander Hendroff* (1935) S.S.L.R. 100; 4 M.L.J. 118.

MOTION.

M. C. Johannes for executors.

T. L. Tan for Official Assignee.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Pedlow J.—This is an application under s. 83 sub-s. 3 of the Bankruptcy Ordinance (Cap. 45) for directions.

The bankrupt had a share in the estate of a deceased person. This share realised more than sufficient to pay his creditors in full.

A few of the bankrupt's creditors whose claims totalled about $450.00 have not proved in the bankruptcy although the Official Assignee has communicated with them at their last known addresses and has published all the notifications required by the Bankruptcy Ordinance.

The question for the determination of the Court is "What is the meaning to be given to s. 67 of the Ordinance?" In other words, whether in determining the "surplus" to which the bankrupt is entitled, provision is to be made for the creditors who have not proved, and, if so, whether interest in accordance with s. 43 sub-s. 7 is to be allowed on the amounts so provided. The real point at issue is, "What is the position of a creditor who has not proved in the bankruptcy in a case such as the one before us?" In my opinion in the present instance the claims of creditors who have not proved can and should be ignored.

Clause 1 of Schedule B of the Ordinance enacts that every creditor shall prove his debt as soon as may be after the making of a Receiving Order. The Ordinance elsewhere provides for time to be given to a creditor to do this who is absent from the Colony or who is prevented by circumstances from proving his claim immediately. The whole idea underlying the Bankruptcy Ordinance seems to me to be that if the creditor neglects his statutory duty to come and prove his claim he has no claim in the bankruptcy. The payment of an ordinary dividend is not to be delayed nor is its amount to be reduced because creditors have not come in and proved. It is true that if after the declaration of the dividend funds subsequently come to the hands of the Official Assignee creditors can then come in and prove but if no such funds reaches the hands of the Official Assignee a creditor who has not proved cannot upset the dividend declared. This view of the Ordinance seems to be one both logical and of practical common sense. It enables finality to be reached and prevents proceedings from being unduly protracted.

The Bankruptcy Ordinance is one which is to be administered with all reasonable speed and nowhere are the proceedings to be delayed for the sake of a creditor who has not proved his debt except a slight delay necessary to enable a creditor who lives at a considerable distance to come in and prove. "The Official Assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts" (s. 60 sub-s. 1). The dividend is payable only to those who have proved

and those who have not proved are to be ignored. At the public examinations of a debtor only creditors who have tendered proofs may question the debtor.

A composition or scheme of arrangement confirmed at a meeting of creditors by a resolution passed by a majority in number representing three-fourths in value of all the creditors who have proved and approved by the Court binds all creditors whether they have proved or not. Only creditors who have proved their debts may assent to or dissent from such a composition or scheme (s.18).

An order of discharge releases the bankrupt from all debts provable in bankruptcy other than debts due to the Crown. Under the circumstances of the present case the bankrupt, if alive, would certainly have been granted an order of discharge had he applied for one and this order of discharge would have released him from debts due to creditors other than the Crown who had neglected to prove their claims.

Under s. 43 sub-s. 7 interest is payable "on all debts proved in the bankruptcy". Once again the implication seems to be that debts not proved in the bankruptcy should be ignored.

Under s. 64 a final dividend is to be declared as soon as the Official Assignee has realised all the property of the bankrupt, "or so much thereof as can, in his opinion, be realised without needlessly protracting the proceedings in bankruptcy". Creditors who have not established their claims to his satisfaction within a limited time are to be ignored and "the property of the bankrupt shall be divided among the creditors who have proved their debts without regard to the claims of any other person."

Section 67 comes in Part III of the Ordinance which deals with the administration of property and the only interpretation of that section consistent with the remainder of Part III of the Ordinance seems to be to interpret "creditors" in s. 67 as meaning creditors who have proved their claims.

Also to prevent fraud there would seem to be very strong reasons why unproved claims should be entirely ignored. A dishonest bankrupt could add many collusive creditors in his statement of affairs and so adversely affect the rate of dividend to be declared to genuine creditors were such claims to be taken notice of when unproved.

The term "creditor" is nowhere defined in the Bankruptcy Ordinance, but the decisions of the Courts seem to be on the lines that creditors who have not proved after a reasonable time and reasonable notice should be ignored. Form 112 of the Bankruptcy Ordinance says that if they do not establish their claim to the satisfaction of the Court on or before a certain day their claim "will be expunged".

It has been suggested that s. 132 of the Bankruptcy Ordinance is against this view, but Williams on Bankruptcy at page 484 distinctly states that unclaimed dividends mean dividends which have been declared on existing and admitted proofs and quotes the case of *re Higginson and Dean*[1]. *In re Keet*[2] takes this same view where Vaugham Williams L.J. construes debts in s. 35 of the English Act as meaning debts admitted to proof, and this is referred to with approval by Williams at page 143 where he says that "all debts which have been actually and properly proved in a bankruptcy must be paid in full", thus ignoring those which have not been proved. The same line of construction is adopted in *In re Staunton*[3] where Walker L.J. says that "I do not think we can construe the alleged rights of the creditors, who did not prove, and who have been passed by in the payment of dividends, and do not now claim." This view of the law would seem to give a practical and workable meaning to the term "creditor" throughout the Bankruptcy Ordinance except where the context clearly requires a different construction.

Against this decision there might appear to be the decisions in two cases reported in the 1935 S.S.L.R. One is that of *re Neo Chin Siew*[4] and the other that of *re Alexander Hendroff*[5]. Those, however, were cases, the one of a composition and the other of an annulment and can perhaps be distinguished from the present case on those grounds. But if I am wrong as to this I must with respect disagree with the learned Judge's decisions in those two cases as they do not bind me. There appear to me to be no grounds either in law or in equity and no other reported cases to justify giving to the word "creditor" in the Bankruptcy Ordinance a meaning which would unduly prolong the winding-up of estates or protect the rights of creditors who will not take the trouble to prove their debts.

The Official Assignee should therefore pay to the creditors who have shared in the dividend interest at the rate of 8% for the requisite period, but should make no provision or reserve for those who have not proved. The balance in his hands should be paid to the executors of the deceased bankrupt.

Order.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.